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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of APPLICATION OF SBC COMMUNICATIONS, INC. FOR AUTHORIZATION UNDER SECTION 271 OF THE COMMUNICATIONS ACT TO PROVIDE IN-REGION, INTERLATA SERVICE IN THE STATE OF OKLAHOMA	CC Docket No. 97-121

REPLY OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), a trade association representing more than 500 entities engaged in, or providing products and services in support of, telecommunications resale, hereby responds to selected arguments proffered by Bell Atlantic and BellSouth in support of Southwestern Bell's pending application to originate traffic within its "in-region State" of Oklahoma. To this end, TRA submits the following observations:

- A BOC is precluded from proceeding under "Track B" once it has received a network interconnection request.
- To preclude BOC access to "Track B," such a network interconnection request need not be received from a currently operational facilities-based competitor.
- A "Track B" statement of generally available terms and conditions may not be used to cure deficiencies in a "Track A" showing of "competitive checklist" compliance.
- The competitive benefits that will purportedly result from BOC entry into the "in-region," interLATA market are insufficient by themselves to satisfy the Section 271(d)(3)(C) public interest standard.
- Requiring the presence of widespread local exchange/exchange access competition before authorizing BOC provision of "in-region," interLATA service is the only viable means of ensuring realization of the Congressional vision of a fully-integrated, highly competitive telecommunications marketplace.

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REPLY OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Public Notice, DA 97-753 (released April 11, 1997), hereby replies to the comments of Bell Atlantic and BellSouth Corporation ("BellSouth") filed in response to the application ("Application") of SBC Communications, Inc. ("SBC"), Southwestern Bell Telephone Company ("SWBTC"), and Southwestern Bell Long Distance ("SWBLD") (collectively, "Southwestern Bell") under Section 271(d) of the Communications Act of 1934 ("Communications Act"),[1] as amended by Section 151 of the Telecommunications Act of 1996 ("1996 Act"),[2] for authority to "originate" interLATA traffic within the Southwestern Bell "in-region State" of Oklahoma ("Application").

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[1] 47 U.S.C. § 271(d).

[2] Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996).

I.

INTRODUCTION

In its Comments in Support of the Association for Local Telecommunications Services ("ALTS") Motion to Dismiss and Request for Sanctions[3] and its subsequently filed Opposition to the Southwestern Bell Application,[4] TRA urged the Commission to deny Southwestern Bell the authority it seeks to "originate" interLATA services within the Southwestern Bell "in-region State" of Oklahoma. As TRA demonstrated in those submissions, Southwestern Bell has failed not only to satisfy the threshold requirements set forth in Section 271(c) for Bell Operating Company ("BOC") provision of "in-region," interLATA service,[5] but the carrier has not demonstrated that grant of the authorization it seeks here would be consistent with the public interest, convenience and necessity, as required by Section 271(d)(3)(C).[6] The Commission, accordingly, cannot make the affirmative findings required by Section 271(d)(3) to support a grant of the Southwestern Bell Application.[7] Indeed, TRA showed that Southwestern Bell's Application is plagued by a host of fundamental flaws, any number of which alone render impossible grant of the requested "in-region," interLATA authority.

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[3] "Comments of the Telecommunications Resellers Association" in Support of the "Motion to Dismiss and Request for Sanctions" filed by the Association for Local Telecommunications Services in CC Docket No. 97-121 (filed April 28, 1997).

[4] "Opposition of the Telecommunications Resellers Association" filed in CC Docket No. 97-121 (filed May 1, 1997).

[5] 47 U.S.C. § 271(c).

[6] 47 U.S.C. § 271(d)(3)(C).

[7] 47 U.S.C. § 271(d)(3).

Bell Atlantic and BellSouth, while not directly advocating grant of the Southwestern Bell Application, urge the Commission to reach certain conclusions regarding the showings BOCs must make to warrant grant of "in-region," interLATA authority under Section 271(d)(3). Among other things, Bell Atlantic and BellSouth contend that (i) a BOC may proceed under Section 271(c)(1)(B)'s "Track B" so long as it submits its Section 271 Application within three months of either a request for network interconnection/access or initiation of service by a facilities-based competitor;[8] (ii) a BOC is precluded from proceeding under "Track B" only if a network interconnection/access request is received from a currently operational facilities-based competitor;[9] (iii) a BOC proceeding under "Track A" may rely upon a "Track B" statement of generally available terms and conditions ("SGATC") to remedy any deficiencies in its "competitive checklist" compliance showing;[10] (iv) the Section 271(d)(3)(C) public interest standard is satisfied by the benefits that will purportedly be derived from BOC entry into the "in-region," interLATA market alone;[11] and (v) a BOC need not show demonstrable local exchange/exchange access competition in order to secure "in-region," interLATA authority. TRA disagrees with each of these contentions.[12]

TRA, however, does agree with BellSouth in one respect. BellSouth is correct that the "Section 271 proceedings will test the Commission's resolve to implement faithfully the 1996

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[8] Comments of BellSouth at 6 - 7.

[9] Comments of Bell Atlantic at 8 - 14; Comments of BellSouth at 5 - 7.

[10] Comments of Bell Atlantic at 5 - 8; Comments of BellSouth at 7 - 12.

[11] Comments of BellSouth at 13 - 16.

[12] Comments of Bell Atlantic at 3 - 5; Comments of BellSouth at 13 - 16.

Act."[13] BellSouth is also correct that in enacting the 1996 Act, "Congress wanted fuller competition in all telecommunications markets."[14] As the Commission has long recognized, the interexchange market is "substantially competitive."[15] It is now time to introduce competition into what the Commission has properly characterized as "one of the last monopoly bottleneck strongholds in telecommunications."[16] As TRA argued in its Opposition, the Commission, in addressing BOC Section 271 Applications, has an opportunity to realize the Congressional vision reflected in the 1996 Act of a fully integrated, highly competitive telecommunications marketplace. That opportunity should not be lost by giving away the "carrot" relied upon by Congress to prompt "the opening [of] all telecommunications markets to competition."[17]

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[13] Comments of BellSouth at i.

[14] Id. (emphasis in original).

[15] Competition in the Interstate, Interexchange Marketplace, 6 FCC Rcd. 5880, ¶ 36 (1991), 6 FCC Rcd. 7255 (1991), 6 FCC Rcd. 7569 (1991), 7 FCC Rcd. 2677 (1992), *recon.* 8 FCC Rcd. 2659 (1993), 8 FCC Rcd. 3668 (1993), 8 FCC Rcd. 5046 (1993), *recon.* 10 FCC Rcd 4562 (1995).

[16] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 4 (released August 8, 1996), *pet. for rev. pending sub nom.* Iowa Utilities Board v. FCC, Case No. 96-3321 (8th Cir. Sept. 5, 1996), *recon.* FCC 96-394 (Sept. 27, 1996), *further recon.* FCC 96-476 (Dec. 13, 1996), *further recon. pending.*

[17] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) ("Joint Explanatory Statement").

II.

ARGUMENT

A. Southwestern Bell is Precluded from Exclusive or "Fill-in-the-Gaps" Reliance upon "Track B" once a Prospective Competitor has Requested the Opportunity to Interconnect its Network Facilities with Southwestern Bell's Local Exchange/Exchange Access Network

Bell Atlantic's and BellSouth's arguments regarding the availability of "Track B" are stark examples of the BOCs' ongoing efforts to twist the language of Section 271(c) and 271(d)(3) to avoid the obligation imposed upon them by Congress to relinquish their local exchange/exchange access "bottlenecks" prior to entering the "in-region," interLATA market. "Track B" was not incorporated into the 1996 Act to provide an easy entry vehicle for the BOCs. Nor was "Track B" designed to provide BOCs with a means of remedying deficiencies in their "Track A" showings. To the contrary, "Track B" was, as succinctly stated in the Conference Committee Report, "intended to ensure that a BOC . . . [was] not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market."[18] In other words, "Track B" is a narrowly-crafted exception incorporated into Section 271(c)(1) in order to protect BOCs from strategic manipulation of local market entry procedures by large interexchange carriers ("IXCs") and nothing more.

In arguing to the contrary, Bell Atlantic and BellSouth essentially argue that Congress altogether botched its effort to condition BOC entry into the "in-region," interLATA

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[18] Id. at 148.

market on a fundamental dismantling of local exchange/exchange access "bottlenecks." Thus, BellSouth contends that "Track B" can be utilized if a BOC submits its Section 271 Application within three months of either receipt of a network interconnection/access request or initiation of service by a facilities-based competitor. And Bell Atlantic joins BellSouth in claiming that in order to preclude access to "Track B," a BOC must have received a network interconnection/access request from a currently operational facilities-based competitor. Not content with these outrageous assertions, the BOCs further argue that to the extent a BOC utilizes the "Track A" entry vehicle, it may utilize a SGATC to remedy any deficiency in its "Track A" "competitive checklist" showing.

First, it is critical that the Commission bear in mind the reasons Bell Atlantic and BellSouth evidence such desperation in arguing for such a seemingly bizarre interpretation of Sections 271(c) and 271(d)(3). "Track A" constitutes a far more exacting entry vehicle than does "Track B." Even under the most relaxed interpretation, "Track A" requires the presence of at least one operational facilities-based competitors. Under "Track B," no competitive entry need have occurred. Under "Track A," a BOC must actually be providing access and interconnection; under "Track B," it is sufficient that a BOC simply offer to provide such access and interconnection. Under "Track A," the fourteen items comprising the "competitive checklist" must have been fully implemented; under "Track B," "competitive checklist" items must only be included in a SGATC. In other words, even under a liberal reading of "Track A," a BOC must document that economic, technical and operational barriers to market entry have been removed and that competitive entry is not only possible, but has actually occurred. Under "Track B," a BOC can hide behind paper claims of "competitive checklist" compliance.

Given these sharp distinctions, BellSouth's contention that a BOC can utilize "Track B" if it files a Section 271 Application within three months of its receipt of a network interconnection/access request appears all the more outrageous. If BellSouth were correct, Congress' inclusion of "Track A" among the Section 271 market entry procedures would have been an entirely meaningless act. No BOC would voluntarily submit to the more stringent requirements of "Track A" if it could utilize "Track B" simply by manipulating the timing of its Section 271 Application. The Congressional facilities-based-competitor test would never be applied; nor would the twin Congressional requirements regarding full implementation of the 14-point "competitive checklist" and actual provision of access and interconnection. As the Courts have long held, interpretations of statutes that render words or provisions meaningless or superfluous are to be avoided.[19]

More tellingly, the BOCs' interpretation would conflict with the central purpose of the telephony provisions of the 1996 Act, as well as the clear Congressional preference regarding the means for achieving those ends. It is beyond dispute that Congress designed the telephony provisions of the 1996 Act to "open[] all telecommunications markets to competition."[20] As noted above, the interLATA market is already subject to "substantial competition;" only the local exchange/exchange access market remains a monopoly bastion. Thus, it goes without saying that it was the local exchange/exchange access market into which

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[19] *See, e.g.,* Department of Revenue of Oregon v. ACF Industries, 510 U.S. 332, 340 - 41 (1994); Weinburger v. Hynson, Westcott & Dunning, Inc., 412 U.S. 609, 633 (1973); Jarecki v. G.D. Searle & Co., 367 U.S. 303, 307 (1961); Zeigler Coal Co. v. Kleppe, 536 F.2d 398 (D.C.Cir. 1976); Wilderness Society v. Morton, 479 F.2d 842, 877 (D.C.Cir. 1973), *cert. denied* 411 U.S. 917 (1974).

[20] Joint Explanatory Statement at 113.

Congress sought to introduce competition. It did so not only by requiring BOCs and other incumbent local exchange carriers ("incumbent LECs") to undertake certain affirmative actions designed to remove economic, operational and technical barriers to entry, but by withholding from the BOCs the authority to "originate" traffic within their respective "in-region States" until competitive market entry had occurred. As the Commission has acknowledged:

> We find that incumbent LECs have no economic incentive, *independent of the incentives set forth in sections 271 and 274 of the 1996 Act,* to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services.[21]

Moreover, Congress expressed a clear preference for negotiation as the vehicle by which competitive entry into the local exchange/exchange access market should be achieved. Thus, the Congress not only required incumbent LECs to "negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in [both subsections '(b)' and '(c)' of Section 251]," but withheld the availability of arbitration for a period of at least 135 days during which the incumbent LEC and the telecommunications carrier requesting network access/interconnection were required to engage in voluntary negotiations.[22] Further, the Congress allowed for the reactivation of "Track B" only in instances in which prospective new market entrants failed to negotiate in good faith or reneged on

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[21] Local Competition First Report and Order, FCC 96-325 at ¶ 55 (emphasis added). This understanding was confirmed by the candid statements of the Chief Executive Officer of one BOC:

> The big difference between us and [the GTE] is they're already in long distance. What's their incentive to cooperate.

"Holding the Line on Local Phone Rivalry," The Washington Post, pp. C-12, C-14 (Oct. 23, 1996).

[22] 47 U.S.C. § 252(a)(1), (b)(1).

negotiated implementation commitments. In other words, arbitrations and SGATCs come into play only when negotiations have not been initiated or, once commenced, have broken down.

In interpreting Section 271(c)(1), the Commission should look to the objects and policy of the telephony provisions of the 1996 Act and construe "Track A" and "Track B" so as to carry into execution the will of Congress.[23] Certainly, the Commission should avoid a construction which would impede achievement of the statutory purpose.[24] And above all, the Commission should not interpret Section 271(c)(1) in a manner that would produce irrational or absurd results.[25]

The BOCs' interpretation of Section 271(c)(1) would violate all of these basic tenets of statutory construction. The BOCs' reading would thwart achievement of the Congressional goal of dismantling the local exchange/exchange access "bottleneck" by providing the BOCs with ready access to a market entry vehicle which does not demand as a prerequisite a showing that competition is in fact possible in their local exchange/exchange access markets.. The BOCs' reading conflicts with the Congressional preference for negotiated entry by allowing the BOCs to secure "in-region," interLATA authority without having to execute any network interconnection/access agreements. And the BOCs' reading would produce irrational and absurd results. Under Bell Atlantic's and BellSouth's interpretation of Section 271(c), monopolists would

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[23] *See, e.g.,* Kokoszka v. Belford, 417 U.S. 642, 646 (1974); United States v. Article of Drug . . . Bacto-Unidisk, 394 U.S. 784, 798 (1969); National Petroleum Refiners Ass'n. v. FTC, 482 F.2d 672, 689 (D.C.Cir. 1973), *cert denied* 415 U.S. 951 (1974).

[24] *See, e.g.,* New York State Dept. of Social Services v. Dublino, 413 U.S. 405, 419 (1973).

[25] *See, e.g.,* Griffen v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982); American Tobacco Co. v. Patterson, 456 U.S. 63, 71 (1982); United States v. American Trucking Ass'ns, Inc., 310 U.S. 534, 543-44 (1940).

be allowed to enter competitive markets in which they could utilize their market power to obtain an anticompetitive advantage without first ensuring that the competitive entry into their monopoly strongholds that would be necessary to blunt that market power is indeed possible. Given this approach, the legacy of the 1996 Act would not be "the opening [of] all telecommunications markets to competition;" rather it would be one of lost opportunities, coupled with a diminution, instead of an enhancement, of telecommunications competition.

No less violative of these fundamental rules of statutory construction is Bell Atlantic's and BellSouth's claim that in order to preclude reliance upon "Track B," the entity requesting network interconnection/access must be, at the time the request is made, currently providing local exchange/exchange access service. As the Commission has recently reported, the "BOCs currently are the dominant providers of local exchange and exchange access services in their in-region states, accounting for approximately 99.1 percent of the local service revenues in those markets."[26] In short, there are precious few markets in which facilities-based competitive LECs are operating, and of these, such operations commenced in the overwhelming majority very recently, generally following execution of network interconnection/access agreements. Thus, if the Bell Atlantic/BellSouth view should prevail, "Track B" would be available as a market entry vehicle in virtually all instances, negating, as above, the role of "Track A" in evaluating BOC Section 271 Applications. Worse yet, "Track B" would remain available so long as a BOC could

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[26] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489, ¶ 10 (released Dec. 24, 1996), *pet. for rev. pending sub nom.* Bell Atlantic v. FCC, Case No. 97-1067 (D.C.Cir. filed January 31, 1997).

event a competitive LEC from initiating service by delaying interconnection, opposing State certification, or other like stratagems

Given that there was virtually no local exchange competition prior to enactment of the 1996 Act, it is simply not plausible that Congress anticipated that new market entrants would clear all necessary regulatory hurdles, construct or substantially modify all necessary network facilities, and establish the necessary operational and marketing infrastructure within a short ten months. Most States did not even have certification procedures in place to accommodate new market entrants when the 1996 Act was enacted. As reported in the Commission's Common Carrier Competition report, as of March 21, 1996, competitive LECs were operational in only five States, with rules allowing such competitive entry having been adopted in only another ten States.[27] Indeed, in the Conference Committee Report, reference was made to only one competitive LEC which had "recently entered into an interconnection agreement . . . with the goal of offering telephony to its . . . [cable] subscribers."[28]

As is apparent, foreclosing access to "Track B" only in those precious few instances in which an operational competitive LEC has requested network interconnection/access would, in much the same way as a holding which would allow a BOC, through strategic manipulation of the timing of its Section 271 Application, continued access to "Track B," thwart achievement of the Congressional goal of dismantling the local exchange/exchange access "bottleneck" and conflict with the Congressional preference for negotiated entry. Moreover, it

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[27] Common Carrier Bureau, Federal Communications Commission, Common Carrier Competition, 3 (Spring, 1996).

[28] Joint Explanatory Statement at 148.

would produce the very same irrational and absurd results, virtually ensuring that entry by monopolists into competitive markets would precede (and as a result impede) entry by competitors into monopoly markets.

Guarding against the possibility that BOCs might be compelled to proceed under "Track A's more stringent entry standards," Bell Atlantic and BellSouth next contend that a SGATC can be used to remedy deficiencies in a BOC's "Track A" "competitive checklist" compliance showing. Apart from the fact that such an approach cannot be squared with the text of Section 271(c) or Section 271(d)(3), reading Section 271(c) in this manner would in large part negate the effectiveness of the "Track A" entry vehicle in ensuring that operational, economic and technical barriers to market entry have indeed been removed.

Initially, it bears emphasis that each reference to "Track A" and "Track B" in Sections 271(c) and 271(d)(3) is couched in the disjunctive, clearly dictating that, depending upon the circumstances, a BOC may rely upon one or the other, but not both. It is well settled that use of the disjunctive in a statute indicates alternatives and requires that those alternatives be treated separately.[29] As clearly stated in the Conference Committee Report:

> a BOC must satisfy the "in-region" test by virtue of the presence of a facilities-based competitor or competitors under new section 271(c)(1)(A), *or* by the failure of a facilities-based competitor to request access or interconnection (under new section 251) as required under new section 271(c)(1)(B).[30]

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[29] *See, e.g.,* United States v. Behnezhad, 907 F.2d 896, 898 (9th Cir. 1990); Quindlen v. Prudential Ins. Co. of America., 482 F.2d 876, 878 (5th Cir. 1973).

[30] Joint Explanatory Statement at 147 (emphasis added).

More tellingly, the Bell Atlantic/BellSouth approach simply makes no logical sense. As noted above, the requirements of "Track A" are far more exacting than the requirements of "Track B" as they relate to "competitive checklist" compliance. The former requires actual provision of interconnection and access and full implementation of the 14-point "competitive checklist;" the latter requires only inclusion of such items in a SGATC. If a BOC can remedy any deficiency in its "Track A" showing simply by reference to a SGATC, then full implementation of the "competitive checklist" is not in fact required. Statutes should be given the most harmonious, comprehensive meaning possible in light of the legislative purpose.[31] If statutory provisions can be read in conformity with one another, they should be so reconciled and not interpreted to create conflicts or inconsistencies.[32]

Sections 271(c)(1)(A) and 271(c)(1)(B) can be read in harmony if "Track B" is treated as the narrowly-crafted exception it was intended to be. Under this approach, further reliance upon "Track B" would be foreclosed once "Track A" was activated. "Track B" could not be used either exclusively or on a "fill-in-the-gaps" basis. As such, a BOC would generally be required to show that it was providing network access and interconnection and that the 14-point "competitive checklist" had been fully implemented in order to qualify for "in-region," interLATA service authority. Only in those rare situations in which it could not demonstrate actual provision of network access and interconnection and full implementation of all

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[31] *See, e.g.,* Weinburger v. Hynson, Westcott & Dunning, Inc., 412 U.S. 609 at 631; Bailey v. United States, 511 F.2d 540, 545 (Ct. Cl. 1975).

[32] *See, e.g.,* Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission, 325 F.2d 230, 235 (D.C.Cir. 1963); Maiatico v. United States, 302 F.2d 880, 886 (D.C.Cir. 1962); Bailey v. United States, 511 F.2d 540 at 545.

"competitive checklist" items because no prospective competitor had sought to interconnect network facilities would a BOC be allowed to rely upon the simple inclusion of "competitive checklist" items in a SGATC. Inconsistencies arise only when efforts are made to blend "Track A" and "Track B." If the two tracks are treated as separate and distinct entry vehicles, no conflicts arise.

B. Bell Atlantic and BellSouth Proffer a Monopolist's View of the Public Interest

Consistent with their persistent efforts to avoid the exacting entry requirements of "Track A," Bell Atlantic and BellSouth also seek to essentially neutralize Section 271(d)(3)(C)'s public interest standard. BellSouth proffers the most brazen argument, suggesting that the public interest test is satisfied by the competitive benefits that will purportedly result from BOC entry into the "in-region," interLATA market, without more. Bell Atlantic is somewhat more restrained, arguing that the public interest standard does not require the presence of widespread local exchange/exchange access competition within the identified "in-region State." Neither argument has merit.

BellSouth's contentions are extraordinarily revealing. Only an entity which has operated within a legally protected monopoly environment, confronting competition only at the fringes of its market, would claim with a straight face that the public interest would be well served by sanctioning its entry into a competitive market in which it could use its market power in its monopoly stronghold to disadvantage competitors without first ensuring that that monopoly bastion had been, or at least could be, breached by competitive providers. As noted previously, the market the BOCs seek to enter is now served by a half dozen national networks supplemented

by dozens of regional networks, and populated by hundreds of providers.[33] More than five years ago, the Commission found this market to be "substantially competitive."[34] And since that time, the market share of AT&T Corp. ("AT&T") has fallen another ten percentage points and the market share of carriers beyond the "big three" has nearly doubled.[35]

Standing in stark contrast is the local exchange/exchange access market. The BOCs still account for "approximately 99.1 percent of the local service revenues in the markets they serve."[36] Two years ago, the Commission reported that "development of competition in local services is roughly a dozen years behind the development of competition in long distance."[37] Over the past decade, competitive access providers have only "selectively impact[ed] the growth of demand of the local exchange carriers."[38] In short, the local exchange remains "one of the last monopoly bottleneck strongholds in telecommunications."[39]

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[33] Motion of AT&T to b Reclassified as a Non-Dominant Carrier, 11 FCC Rcd. 3271, ¶¶ 57 - 62 (1995); Fiber Deployment Update: End of Year 1995, Kraushaar, J. M., Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 6 - 14 (July 1996).

[34] Competition in the Interstate, Interexchange Marketplace, 6 FCC Rcd. 5880 at ¶ 36.

[35] Long Distance Market Shares (Third Quarter 1996), Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Table 5 (Jan. 15, 1997).

[36] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 at ¶ 10.

[37] Common Carrier Bureau, Federal Communications Commission, Common Carrier Competition, (Spring, 1995).

[38] Fiber Deployment Update: End of Year 1995 at 34.

[39] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 at ¶ 4.

As the Commission has recognized, introducing competition into the local exchange/exchange access market is key to realization of the Congressional goal of "opening all telecommunications markets to competition."[40] Infusion of competition into this "monopoly bottleneck stronghold" was intended by Congress "to pave the way for enhanced competition in *all* telecommunications markets."[41] As the Commission explained, "[c]ompetition in local exchange and exchange access markets is desirable, not only because of the social and economic benefits competition will bring to consumers of *local* services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition."[42]

The sequence, hence, is critical to furtherance of the public interest. First, given that "incumbent LECs have no economic incentive, *independent of the incentives set forth in sections 271 and 274 of the 1996 Act,* to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services,"[43] local exchange/exchange access competition will not emerge, or will not emerge as quickly, if BOC entry into the "in-region," interLATA market is authorized prematurely. Thus, in order to secure for the public the benefits of local competition, grant of "in-region," interLATA authority must follow competitive entry into the local exchange/exchange access market. Only after the benefits

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[40] Joint Explanatory Statement at 113.

[41] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 at ¶ 4 (emphasis in original).

[42] Id. (emphasis in original).

[43] Id. at ¶ 55 (emphasis added).

to be derived from such competitive entry have been secured should the focus shift to "promoting greater competition in the long distance market."[44] As the Commission has explained, local exchange/exchange access competition will "pave the way for enhanced competition in all telecommunications markets."[45] As set forth by the Commission, the proper sequence is:

> Under section 251, incumbent local exchange carriers . . ., including the Bell Operating Companies . . ., are mandated to take several steps to open their networks to competition . . . Under Section 271, *once the BOCs have taken the necessary steps,* they are allowed to offer long distance service in areas where they provide local telephone service.[46]

Moreover, just as the Commission has recognized that the public will benefit from local exchange/exchange access competition, so too has it acknowledged that the BOCs retain the incentive and the ability to utilize their "bottlenecks" control of essential facilities to disadvantage IXC rivals.[47] While the Congress and the Commission have endeavored to establish various structural and accounting safeguards to curb BOC abuse of market power, only the market forces unleased by competitive entry into the local exchange/exchange access market will adequately discipline BOC market behavior.[48] Thus, the secondary goal of "promoting greater

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[44] Id. (emphasis in original).

[45] Id. (emphasis in original).

[46] Id. (emphasis in original).

[47] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 at ¶¶ 10 - 13.

[48] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 at ¶¶ 1 *et. seq.*; Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996 (Report and Order), CC Docket No. 96-150, FCC 96-490, 11 FCC Rcd. 17539 (Dec. 24, 1996); 47 U.S.C. § 272.

competition in the long distance market" will only be achieved if the proper sequence is followed.

Examined from another perspective, the BellSouth argument lacks logic. If the competitive benefits that will purportedly result from BOC entry into the "in-region," interLATA market are enough, without more, to satisfy the Section 271(d)(3)(C) public interest criterion, that standard is superfluous. The analysis that must be undertaken by the Commission under Section 271 requires careful scrutiny of the petitioning BOC's satisfaction of the requirements of Sections 271(c)(1) and 271(c)(2), followed by a review of the BOC's compliance with Section 272. But for the addition of the Section 271(d)(3)(C) public interest criterion, a BOC that had cleared these two hurdles would be permitted to enter the "in-region," interLATA market. If, as BellSouth suggests, such entry is deemed to be presumptively in the public interest, the analysis undertaken under Section 271(d)(3)(C) could not alter this outcome and, accordingly, would add nothing to the calculous.

As discussed earlier, all provisions of a statute should be given meaning and effect and should not be assumed to be mere surplusage.[49] To have meaning, the Section 271(d)(3)(C) public interest criterion must mean something more that whatever benefits might ultimately be derived from BOC provision of "in-region," interLATA service. Given that a public interest standard must derive its meaning from the purpose of the statute in which it is set forth[50] and certainly is broad enough to encompass various competitive considerations,[51] TRA submits that

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[49] *See* footnote 19, *supra*.

[50] *See, e.g.,* NAACP v. FPC, 425 U.S. 662, 669 (1976).

[51] *See, e.g.,* FCC v. RCA Communications, Inc., 346 U.S. 86, 90 - 94 (1953).

the public interest standard certainly requires analysis of the many "issues for competition and consumers" raised by "BOC entry into in-region, interLATA services."[52] And contrary to Bell Atlantic's contentions, the public interest analysis therefore must involve consideration of competitive entry into the local exchange/exchange access market.

The existence of widespread local exchange/exchange access competition addresses several concerns critical to a public interest analysis. First, it provides demonstrable evidence that local markets have indeed been opened to competitive entry. Given the number and diversity of the economic and operational barriers to entry that the Commission has acknowledged exist,[53] the only viable way to confirm that local markets have actually been opened is to ascertain that new market entrants have established competitive footholds. As the Commission has recognized, such difficult to detect stratagems as BOC failure to provide such basic functions as ordering, provisioning, maintenance and repair on a nondiscriminatory basis can severely disadvantage competitors.[54]

Second, widespread local exchange/exchange access competition confirms that the fourteen items on the "competitive checklist" have truly been "fully implemented." Full implementation requires actual operational viability, not mere paper promises, and operational viability generally can only be determined in a commercial setting. Competitors will readily identify flaws that might otherwise go unnoticed.

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[52] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 at ¶ 10.

[53] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 at ¶¶ 10 - 20.

[54] Id. at ¶ 518.

Third, widespread local exchange/exchange access competition ensures that the public will in fact derive the benefits competitive local exchange/exchange access service offerings should afford. Fourth, such competition will enhance the likelihood that long distance competition will not be adversely impacted by BOC entry into the "in-region," interLATA market. Consumers benefit from actual, not theoretical, competition. BOC market behavior is constrained by actual, not theoretical, market forces.

Simply put, the proof is truly in the pudding. If there is little or no local exchange/exchange access competition, the odds are that the petitioning BOC has not completely opened its markets and fully implemented all items on the "competitive checklist." History teaches that monopolists do not readily relinquish market control. Economics teaches that corporations will generally pursue profit-maximizing strategies. Logic, therefore, dictates that the Commission should proceed with caution in dolling out the sole incentive BOCs have to take actions that would otherwise be directly contrary to their interests. As the Commission has recognized:

> Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LEC for its customers and its control of the local market.[55]

[55] Id. at ¶ 55.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association once again urges the Commission to deny the Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Long Distance for authority for SWBLD to provide interLATA services "originating" within the SWBTC "in-region State" of Oklahoma. As demonstrated by TRA above and in its earlier filed Opposition, Southwestern Bell has failed to satisfy the requirements for providing "in-region," interLATA service set forth in Section 271(c), and has not shown that the authorization it requests is consistent with the public interest, convenience and necessity, as required by Section 271(d)(3)(C).

Respectfully submitted,

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